

Dennis Whittlesey, Esq.  
Jackson and Kelly  
Attorneys at Law  
Suite 400  
2401 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037

Dear Mr. Whittlesey:

Please find enclosed a Draft Memorandum of Understanding between Clark County and the Cowlitz Tribe. This draft relates to the development of property located at the LaCenter exit in Clark County, Washington which is currently being considered for tribal trust status by the Bureau of Indian Affairs.

The Draft Agreement attempts to address potential impacts upon Clark County which may result from a variety of uses of the property, including gaming, recognizing that the Tribal Council has not decided how the property will be used.

As you are aware the draft agreement is the first step in the County process. The Board of County Commissioners feel strongly that public input is a key element in the open governmental process. We therefore will be establishing a time period during which public comment will be received from the citizens of Clark County. This input will be considered by the Board of County Commissioners prior to signing any formal agreement.

I wish to express my appreciation for the Tribe's willingness to address issues which are of concern to Clark County. I am confident, that after the public process, we will be able to finalize an agreement that meets the needs of both the tribe and the citizens of Clark County. Once again, thank you for your professionalism and willingness to be flexible in this negotiation process.

Yours very truly,

Curt Wyrick  
Chief Deputy

CW/hj

cc: Dave Barnett

## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding ("MOU") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between the COWLITZ INDIAN TRIBE , a federally recognized Indian tribe ("Tribe"), and CLARK COUNTY, a political subdivision of the State of Washington ("County").

### **1.0 INTRODUCTION**

- 1.1** The Tribe is a federally recognized Indian tribe for which land is being taken into trust by the United States Department of the Interior, which land is within County's geographic boundaries ("Clark County Site").
- 1.2** The Tribe presently is evaluating a long-term economic development plan which would include planning for the ultimate development of all tribal properties, including the Clark County Site.
- 1.3** The Tribe desires to develop its economic opportunities in a manner which benefits the Tribe, its members and the general community as a whole; and the County recognizes that mutual benefits can be derived if this goal is achieved. Accordingly, the Tribe and the County have participated in a series of meetings to hear and consider the ways in which both parties can benefit by working together.
- 1.4** This MOU embodies the concepts and agreements developed by the Tribe and the County to date as a result of those meetings and continuing dialogue.

The cornerstone of this Agreement is that the County and the Tribe are entering into an enforceable Agreement to comprehensively mitigate impacts of this acquisition as developed, including, but not limited to: be consistent with attached county ordinances; mitigating environmental impact of its planned uses of trust land; paying development and other processing fees; be consistent with building and design standards set out in County ordinances; compensate the county law enforcement; prosecuting attorney, courts and schools and fire districts; and others who provide public services on the Tribe's trust lands.

### **2.0 FORMAT OF MOU**

This MOU contains the various understandings between the Tribe and the County as set forth below.

### **3.0 LAW ENFORCEMENT**

- 3.1** As the Tribe makes decisions as to the use or uses of the Clark County Site, the Tribe will enter into with Clark County a detailed agreement providing for law enforcement on tribal trust land. Such agreement will be more comprehensive

than this MOU, but the following general issues are agreed to here and will be part of the subsequent law enforcement agreement.

- 3.2** The parties recognize that any tribal use of the Clark County Site will create added burdens not contemplated or allowed under current zoning in terms of patrolling and responding to calls for assistance. In order to meet these increased burdens, the Tribe and County agree as follows:
- 3.2.1** The Tribe, in behalf of itself and all members, hereby consents to the entry of officers onto tribal trust lands and into any structures thereon for the purpose of providing law enforcement services.
- 3.2.2** If the Tribe creates a tribal security force, they will assist the Tribe with the cross training required to provide a smooth and effective working relationship. The Sheriff's Office will assist the Tribe as needed to review written policies and guidelines for tribal security personnel as well as expectations for Tribal security officers to interface effectively and smoothly with Sheriff's Office operations.
- 3.2.3** To help offset the added cost of such training, patrolling and response services by the Sheriff's Office, the Tribe will enter into an agreement to reimburse the Sheriff's Office for reasonable direct and indirect costs incurred in conjunction with the furnishing of law enforcement at the Clark County Site.
- 3.2.4** The Sheriff's Office has developed a reasonable cost assessment for certain identified uses of the tribal trust property and their impacts upon law enforcement. Though the use of the property by the Tribe has not been determined, the Sheriff's Office has developed staffing analysis requirements based upon uses found in other tribal trust properties. The Sheriff's Office has developed Exhibit A, attached hereto, setting forth staffing requirements for certain types of uses or combinations thereof. The parties agree that should the Tribe elect to develop the property for those uses contained in Exhibit A, the Tribe will fund at a minimum the required number of deputy FTEs as set forth in such Exhibit, as shall be specifically agreed upon and memorialized in an addendum to this Memorandum of Understanding.
- 3.2.5** The parties agree that the staffing levels and FTE costs shall be adjusted on an annual basis. This adjusted amount shall be based upon actual costs to the prior year's calls for service; a future work load analysis based on historic calls for service related directly or indirectly from the use of the property; indirect calls stemming from the use of the Tribal property; and any proposed changes or expansion of use of the Tribal property contemplated for the upcoming year.

## **4.0 PROSECUTION**

- 4.1** All prosecutions for violations of law at the Clark County Site for which the State of Washington or Clark County has jurisdiction shall be conducted by the Clark County Prosecuting Attorney's Office in state court without regard to whether the charges are filed against Indians (including members of the Tribe) or non-Indians.
- 4.2** The Tribe shall have the right to name officials with whom the Clark County Prosecuting Attorney's Office will coordinate all such prosecutions, but prosecutorial decisions and strategies shall be exclusively within the discretion of the Clark County Prosecuting Attorney's Office.
- 4.3** In addition, the Tribe will execute an agreement with the Clark County Prosecuting Attorney's Office regarding payment for prosecution of misdemeanor crimes committed on tribal trust land within the County.

## **5.0 COURT AND JAIL SERVICES**

### **5.1 Misdemeanor/Gross Misdemeanor Prosecutions.**

It is anticipated by the parties that the prosecution of persons committing crimes on tribal land, court probation and services and detention will result from the arrest and or conviction of misdemeanor and gross misdemeanors. Currently the County has in place, pursuant to RCW 39.34, interlocal agreements with cities which sets forth the cost for jail beds, court related or corrections programs and costs per case for processing cases through Clark County District Court. The parties agree to enter into an interlocal agreement substantially similar to Exhibit B, attached hereto and incorporated herein to the extent not prohibited by federal law.

- 5.2** Juvenile Prosecutions and felony prosecutions for crimes occurring on tribal land shall be processed in the same manner as juvenile and felony crimes are currently prosecuted for cities. Provided, felonies committed by Indians on tribal land may be subject to exclusive federal jurisdiction.

## **6.0 FIRE PROTECTION**

The Tribe recognizes that protection of the present Clark County site and future economic development of the Clark County site will result in demands for fire protection and emergency response services. The tribe agrees to compensate Clark County Fire District 12 for these costs of providing such services to tribal lands and facilities.

## **7.0 HEALTH DEPARTMENT**

The Tribe agrees to comply with all health regulations adopted by the State of Washington and Clark County. The Tribe agrees to obtain all required permits and to allow health inspectors access to the property to ensure compliance with all state and local health regulations.

## **8.0 TRAFFIC MITIGATION**

- 8.1** Roads and Traffic Circulation. The Tribe will mitigate traffic, safety, and circulation issues in conformity with Clark County requirements. For each phase of the proposed development, Clark County will give the Tribe credit for vehicular traffic that would be generated if the property was developed based on uses permitted in the Agriculture District. The Tribe agrees to make roadway and intersection improvements to maintain traffic levels-of-service existing prior to each phase less the credit described above. The Tribe shall ensure that in no event may it cause the public road system to operate below a level-of-service (LOS) D for intersection delay during the peak traffic hour. LOS D standards shall be determined based on the most recently adopted version of the Highway Capacity Manual (Transportation Research Board).

The public road system shall include NW 319th Street, NW 324th Street, NW 41st Avenue, NW 31st Avenue, and the I-5/319th Street interchange. The design of public roadway and intersection improvements shall be approved by Clark County prior to beginning the improvement work. The design of the NW 319th Street interchange improvements shall be approved by the Washington State Department of Transportation prior to beginning the improvement work.

- 8.2** All reasonable and negotiated costs, expenses or charges associated with the alteration, construction or improvement of the public road system set forth in 8.1 shall be the responsibility of the Tribe.

## **9.0 SEWER AND WATER**

- 9.1** The Tribe shall provide sewage conveyance, treatment, and disposal through either of the following means:

**9.1.1** Connection to an existing sewage treatment plant operating in full compliance with State of Washington standards;

**9.1.2** Development of a new independent sewage treatment plant constructed by the Tribe that operates in full compliance with State of Washington standards.

- 9.2** No use of the proposed development shall be made until such time as the sewer service is completed, inspected, and fully compliant with applicable State of Washington and federal standards.

**9.3** The Tribe shall provide for water supply through either of the following means:

**9.3.1** Connection to the existing Clark Public Utilities system;

**9.3.2** Development of a new independent water supply system, including obtaining water rights, that operates in full compliance with State of Washington and local standards.

## **10.0 COMPLIANCE WITH COUNTY ORDINANCES**

The trust lands subject to this Agreement and any structures and uses on the property shall be developed in a manner consistent with the attached county codes applicable at the time of development of construction. Attached are the current transportation standards in Clark County Code Chapter 12.05A - Transportation Standards; Title 13 - Public Works; Title 14 - Building and Structures; Title 15 - Fire Prevention; Title 20 - Clark County Environmental Policy. Any future changes, additions or modifications in the use or development of the parcel shall be consistent with such County ordinances. Index of such code provisions is attached hereto as Exhibit C.

**10.1** Any buildings constructed on the tribal trust land shall conform to applicable Clark County building codes, county ordinances and codes.

**10.2** The County shall assist the Tribe in implementing the aforesaid building standards by:

**10.2.1** Promptly conducting plan checks of all documents submitted to it, on a priority basis if necessary, and

**10.2.2** Assigning a building inspector to conduct inspections on a timely basis.

**10.3** The Tribe shall pay to County for such services reasonable fees as shall be agreed upon.

## **11.0 IMPACTS ON COUNTY REVENUES**

**11.1** The Tribe shall compensate the County and local districts on a biannual basis in lieu of property taxes for any revenue lost resulting from the removal of the Clark County Site from the tax rolls, including the value of all improvements and personal property consistent with the customary assessment procedures used by the County Assessor and consistent with the State Constitution, for any loss in sales tax revenue, and an annual payment of the equivalent of a transient occupancy tax as payable to the County pursuant to Clark County Code 3.16, but for the Tribe's status as a sovereign nation.

**11.2** Local Improvement District. All buildings and property owned by the Tribe shall be subject to LID assessments in the same manner as any other landowner should the Tribe's property be a part of a local improvement district.

**11.3** Fire District 12.

A. LID. Fire District 12 has adopted a five-year plan in which the District has identified the need for an aerial fire apparatus and a main station in the vicinity of the Ridgefield Junction when significant commercial, retail, industrial, and similar development begins to happen with the District. Potential development by the tribe and current development proposed within the District require the District to secure funding for this station and vehicle in the next two to four years. Currently the District is exploring a LID applied to the area identified as available for this type of development. Funds from this LID would pay for construction of a new station at the Ridgefield Junction. If the District proceeds with this LID, the tribe agrees to participate in this LID in the same manner as other persons owning property in the LID and pay any amount assessed under said LID as if the tribal property were taxable.

B. In order to meet the above capital needs the District is also exploring a funding source where property owners would have the option of donating an initial amount up front or of donating the same amount with interest at a later date. The amounts would be set in the same manner as they would be in a LID process.

C. LID or SEPA Mitigation Fee. The District is exploring the use of SEPA mitigation fees to address their needs for a station and aerial apparatus. If the District uses these fees, the Tribe agrees to participate in the same manner as other developers.

D. Benefit Charges. State RCW's allow the District to use a benefit charge instead of property taxes. Although the District does not presently use benefit charges, if the District voters chose to change to a benefit method of financing District operations, the Tribe agrees to participate in the same manner as other residents and businesses in the District.

**11.4** Sales Tax. The Tribe agrees to collect all sales and use tax on all non-Indian sales which take place on the trust property. The rate of collection shall be in conformance with the applicable tax rate as provided by the Department of Revenue. The Tribe agrees to remit such sales tax to the State of Washington as required by state law.

**11.5** Impact Fees. The Tribe shall pay all applicable impact fees pursuant to Clark County Code 18.65. (Copy to be faxed.)

## **12.0 ADDITIONAL TRIBAL COMMITMENTS.**

12.1.1 The Tribe agrees to establish the Cowlitz Education & Arts Fund for the support of charitable activities in Clark County, including arts, education and local government support. The Tribe will commit two percent (2%) of the Net Revenues of any casino it operates within the Clark County area, as "Net Revenues" is defined at 25 U.S.C. § 2703(9). The Fund shall be managed by a five-person Board, comprised of two (2) tribal appointees and two (2) appointees of Clark County. The fifth member of the Board shall be selected by the four Board members appointed by the parties. The Board will promulgate both standards for application and application forms to be made available to all prospective applicant groups for grants from the Fund. Grant awards shall be made biannually and such award decisions of the Board will be made at the Board's discretion. This fund shall be separate from and in addition to any community contribution fund required by the State-Tribal Gaming Compact. Monies paid to the Cowlitz Education and Arts Fund shall not be used as a credit against state-tribal gaming contribution requirements. Payments to the fund shall be in lieu of payments under 5.18 of the Clark County Code

12.1.2 Problem Gambling. The tribe shall make a contribution of not less than \$50,000, to Clark County, payments shall be annually increased or decreased coincident with the then current consumer price index for the Portland Metropolitan area, which shall expend the money exclusively to address problem gambling issues which are identified by Clark County as requiring special efforts or attention. Such programs shall be reviewed by the parties every five (5) years.

## **13.0 LIMITED WAIVER OF TRIBAL SOVEREIGN IMMUNITY**

**The parties understand that as a sovereign nation, the Tribe is immune from suit. In consideration for the Tribes compliance with this agreement and its limited waiver of sovereign immunity the County agrees to provide services as described herein.** The Tribe agrees to waive its sovereign immunity in favor of the County as to any dispute which arises out of this MOU or the activities undertaken by the Tribe, pursuant to the terms set forth herein for enforcement. The Tribe's governing body shall execute a formal Resolution of Limited Waiver of Sovereign Immunity substantially identical to the Resolution attached to this MOU as Exhibit D.

## **14.0 DISPUTE RESOLUTION**

### **14.1 Meet and Confer Process.**

In the event that either party believes that the other has committed a possible violation of this MOU, it may request in writing that the parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the problem within fifteen (15) days of the date of service of said request; provided that if the complaining party believes that the problem



identified creates a threat to public health or safety, the complaining party may proceed directly to Judicial Review as provided in Section 16 below.

#### **14.2 Notice of Disagreement.**

If the complaining party is not satisfied with the result of the meet and confer process, the complaining party may provide written notice to the other identifying and describing any alleged violation of this MOU ("Notice of Disagreement"), with particularity, if available, and setting forth the action required to remedy the alleged violation.

#### **14.3 Response to Notice of Disagreement.**

Within fifteen (15) business days of service of a Notice of Disagreement, the recipient shall provide a written response either denying or admitting the allegation(s) set forth in the Notice of Disagreement, and, if the truth of the allegations are admitted, setting forth in detail the steps it has taken and/or will take to cure the violations. Failure to serve a timely response shall entitle the complaining party to proceed directly to Judicial Review as provided in Section 16 below.

#### **14.4 Expedited Procedure for Threats to Public Safety.**

If the County or the Tribe reasonably believes that in violation of this MOU the other's conduct has caused or will cause a significant threat to public health or safety, resolution of which cannot be delayed for the time periods otherwise specified in this section, the complaining party may proceed directly to Judicial Review pursuant to Section 15 of this MOU. At least twenty-four (24) hours before proceeding in this manner, the complaining party shall provide to the other a written request for correction and notice of intent to exercise its rights under this Paragraph 14.4, setting out the legal and/or factual basis for its reasonable belief that there is a present or an imminent threat to public health or safety.

### **15.0 JUDICIAL REVIEW**

**15.1** The parties consent to judicial review of any dispute which cannot be resolved through the Dispute Resolution provisions of Section 15. Enforcement of this agreement shall be enforced in Clark County Superior Court.

**15.2** Service of process in any such judicial proceeding is waived in favor of delivery of court documents by Certified Mail - Return Receipt Requested to the following:

**FOR THE TRIBE:**

The Honorable John Barnett  
Tribal Chairman  
Cowlitz Indian Tribe  
1055 - 9<sup>th</sup> Avenue - Suite A  
Longview, Washington 98632  
Telephone: (360) 577-8140  
Facsimile: (360) 577-7432

Dennis J. Whittlesey, Esquire  
Jackson Kelly PLLC  
2401 Pennsylvania Avenue, N.W.  
Suite 400  
Washington, D. C. 20037  
Telephone: (202) 973-0200  
Facsimile: (202) 973-0272

**FOR THE COUNTY:**

Bill Barron  
County Administrator  
1300 Franklin Street  
Vancouver, Washington 98660  
Telephone: (360) 397-2232  
Facsimile: (360) 397-6058

**16.0 MISCELLANEOUS**

- 16.1 Amendment or Modification.** This MOU may be modified or amended only by a written instrument executed by the Tribe and the County, pursuant to the same authorizations used to execute this MOU in its original form.
- 16.2 Entire Agreement.** This MOU is the entire agreement between the parties and supersedes all prior written and oral agreements, if any, with respect to the subject matter hereof.
- 16.3 Severability.** Except as otherwise provided in this Paragraph 16.3, the invalidity of any provisions or portion of a provision of this MOU as determined by a court of competent jurisdiction shall not affect the validity of any other provisions of this MOU or the remaining portions of the applicable provisions. If any provision of this MOU is declared invalid by a court of competent jurisdiction which results in the diminution of any payments or financial obligations of the Tribe to the County, then the parties shall use their best efforts to renegotiate the terms of the invalid provisions; in the event that the parties are unable to successfully renegotiate the invalid terms, then they shall resolve the matters at issue through the dispute resolution provisions of this MOU.
- 16.4 Force Majeure.** In the event of a forced delay in the performance by either party of obligations under this MOU due to acts of God or of the public enemy, acts of inaction of the other party or its employees or agents, strikes, lockouts, unusual delay in transportation, unavailability of materials, fires, floods, catastrophic weather or other natural disasters, epidemics, riots, insurrection, war or unavoidable casualties, the time for performance of such obligations shall be extended for the period of the forced delay.

**16.5 Obligations to Continue During Life of Project.** Unless specifically designated otherwise, all of the parties' obligations under this MOU shall continue throughout the entire life of the development on the trust property to which this MOU pertains.

**16.6 Governing Law.** This MOU shall be construed pursuant to the applicable federal laws and the laws of the State of Washington.

**16.7 Mutual Good Faith.** Throughout the term of this MOU, the parties agree to exercise good faith and to observe the covenants contained herein.

**17.0 REVIEW BY THE DEPARTMENT OF THE INTERIOR.**

The parties shall submit this Agreement to the United States Department of the Interior for either **(a)** approval pursuant to 25 U.S.C. § 81, or **(b)** a written response that this Agreement does not require approval under 25 U.S.C. §81. The County's signature to this MOU is expressly contingent upon the approval called for in this paragraph, and the County has the right to withdraw its support for the MOU if it is not submitted to the Department of the Interior pursuant to this Section or is rejected by the Department of Interior as unacceptable and unenforceable.

DATED this \_\_\_\_ day of \_\_\_\_\_.

Attest:

BOARD OF COMMISSIONERS  
FOR CLARK COUNTY, WASHINGTON

\_\_\_\_\_  
Clerk to the Board

By: \_\_\_\_\_  
Craig Pridemore, Chair

Approved as to form only:  
ARTHUR D. CURTIS  
Prosecuting Attorney

By: \_\_\_\_\_  
Betty Sue Morris, Commissioner

\_\_\_\_\_  
Curt Wyrick, WSBA #4894  
Chief Deputy

By: \_\_\_\_\_  
Judie Stanton, Commissioner

COWLITZ INDIAN TRIBE

\_\_\_\_\_  
John Barnett, Tribal Chairman

## EXHIBIT A

1. Cost per Deputy FTE - 1 deputy FTE = \$110,000. This amount equals the cost of salaries, benefits, equipment and indirect costs. These costs and indirect costs are broken down as follows:

<b>COST ASSOCIATED WITH 1 DEPUTY (ONGOING ONLY)</b>	
Expense Category	<b>2003</b>
Salaries (Deputy Sheriff II, Step 3)	53,310
Earned Leave (Vacation & Sick)	14,680
Employee Benefits (average of 29% of salaries)	15,150
Subtotal: Salaries and Benefits	<b>83,140</b>
<b>Internal Svcs</b> (Vehicle ER&R & Central Stores)	10,750
Overtime/Comp time (average per deputy)	7,420
Uniforms & Equip (replacement only)	4,000
MDC ER&R (service and replacement costs)	2,120
Training (average; does not include one-time academy)	2,000
Radios Fees (800 MHz fees for Communication Equip.)	2,160
Subtotal: Other	<b>28,450</b>
Estimated cost of a Deputy for 2003	<b>111,590</b>

2. Ridgefield and La Center, PD Service Contracts - The Tribal land proposed for development is currently within a law enforcement contract area of Ridgefield and La Center. Under these agreements, law enforcement services are within the Sheriffs Office jurisdiction, however service is provided by the Ridgefield Police Department as part of that contract. The service contract with the Ridgefield Police Department governs a significant number of miles, surrounding the city of Ridgefield, as well as the west side of 1/5 at the 319th street junction. A service contract with the La Center Police Department governs the east side of I/5 at 319th street junction.

- The proposed development falls within the jurisdiction of the Clark County Sheriff s Office.
- The cities of Ridgefield and La Center do not have future annexation plans that would affect or hange the jurisdiction in this area.
- Law enforcement services to the proposed developments can not be provided through current contracts for service.
- Law enforcement services to the proposed developments can not be provided utilizing current staffing levels at the Sheriff s Office.
- Cancellation of Service Contracts - Tribal development of the property will require the cancellation of the current service contracts with La Center and Ridgefield. The number of sheriffs deputies will be increased to provide adequate police services for the developed use.
- Ridgefield - Revenue from cancellation of the service contract will be approximately \$75,000 and will be utilized to staff a portion of one deputy position. Full funding for one position would be \$110,000, therefore \$35,000 would need to be added to fully staff one full time deputy + all direct and indirect. Two full time deputies are needed to staff the area adequately

during peak times (two sing cars, 1A/1B).

- Contract revenue = \$75,000
  - Additional funding need = \$145,000
  - **Total new impact - \$145,000 = 2FTE**
- La Center - The area surrounding the city of La Center would require similar 24 hour patrolling by the Sheriffs Office. Based upon calls for service, staffing the La Center contract area would require a minimum of two full time deputies. Savings from the La Center contract would be approximately \$90,000. \$130,000 would need to be added to fully staff two full time deputies + all direct and indirect.
    - Contract revenue = \$90,000
    - Additional funding need = \$130,000
    - **Total new impact - \$130,000 = 2FTE**

The parties agree that depending on the type of development, the need for law enforcement services will vary. If all the parties recognize that no decision has been made regarding the use of the property, there are examples of tribal development for properties located along 1-5 which provide an indication of the needed police staffing levels should such types of development occur.

**Truck Stop** - A large sized truck stop would generate a minimum of 200 calls for service to the venue with impacts to traffic and commercial vehicle enforcement in the area. .5 deputies would be required to address calls to the facility, to provide half-time coverage for one year, three additional deputies would be required.

**Total minimum new impact - \$330,000 = 3 FTE**

**Outlet Mall** - Fraud crimes in the county have increased disproportionately to other crimes and the Sheriffs Office experience with large retailers in the county indicates that call response will certainly vary from 200-450 calls per year (using Fred Meyer and Walmart as comparables). With a security staff on site, we would expect that an outlet mall would generate a call response comparable with that of our larger retailers in the county. .5 deputies would be required as a minimum to address calls to the facility. To provide half-time coverage for one year, three additional deputies would be required.

**Total minimum new impact - \$330,000 = 3 FTE**

**Casino** - Research from Placer County, CA; Spirit Mountain Casino, Seven Feathers Casino, Chinook Winds Casino, Lincoln City PD, Henderson NV PD indicated that a casino with a maximum capacity of 20,000 would generate a minimum of 350 calls for service responding to the casino only. Inquiries indicate that impacts to the parking area and to traffic in the area would increase substantially. It is estimated that casino parking lots and surrounding areas would generate a minimum of 300 calls for service. This is based solely on the size and number of participants. Research from other venues indicates that a minimum of one full time deputy would be required, 24 hours a day, to respond to calls for service at a casino. The Sheriffs Office deploys six shifts, which provide 24 hour coverage. Therefore, the minimum number of deputies required to police a casino would be six. Venues contacted indicated that there was the potential for an increase in calls relating to drug activity, vice and other task force related activity. The nature of that activity generates a task force response three to four days per week in the venues

contacted. Based upon impacts to the task force, we would advocate for one additional deputy, for a total of seven.

**Total minimum new impact - \$770,000 = 7 FTE**

**Training** - It takes approximately one year from the time that a budget is approved to hire additional deputies to complete the recruitment and selection process, the mandatory training at the academy, and completion of the field officer training program. In order to have law enforcement officers available at the time the project becomes operational, this process must begin at least one year prior to construction being completed.

The parties recognize that until there is development of tribal trust lands, the tribe is without a revenue source. Therefore, the parties agree that within one year of the commencement of commercial activity which will generate income to the tribe, the tribe will reimburse Clark County for all expenses incurred in the hiring and training of deputy sheriffs to provide service in the tribal area. This amount will be in addition to the ongoing expenses set forth above.

3. Annual Adjustments - The parties recognize that the appropriate staffing level for law enforcement will vary based upon the types of activities and development which the tribe ultimately selects for the property. On or before September 15th of each year, representatives of the Clark County Sheriffs Office and the tribe shall meet and discuss appropriate staffing levels and rates of reimbursements for the upcoming calendar year. The staffing levels and amount of reimbursement as agreed to by the parties shall be effective January 1st of each year unless modified by agreement of the parties.

4. Operational Protocols - Prior to providing law enforcement services on tribal trust land, the parties agree that law enforcement operation protocols will be adopted which will fully set forth how law enforcement will respond to calls for service, crimes.

## **EXHIBIT B**

### **Interlocal Governmental Agreement**

#### **Between**

**City of VANCOUVER, State of Washington**

#### **and**

#### **Clark County for Jail, Court and Correction Services**

In accordance with the Interlocal Cooperation Act (RCW, Ch. 39.34) and the City and County Jails Act (RCW, Ch. 70.48, as amended), Clark County, a municipal corporation and legal subdivision of the State of Washington (the "County") and the City of VANCOUVER, a Washington municipal corporation of the first class (the "City"), in consideration of the payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties, do covenant and agree as follows:

#### **ARTICLE I**

##### **PURPOSE OF AGREEMENT/ AUTHORITY**

Chapter 308, the 1996 laws of Washington, states that each city and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions and referred from their respective law enforcement agencies whether filed under state law or city ordinance. Cities may elect to carry out these responsibilities by entering into interlocal agreements to provide these services. Clark County has an established jail facility, corrections department, and district court capable of providing these services. It is the intent of the parties, through this Agreement, to establish procedures by which the County shall provide jail and correction services for the City and to establish a mechanism by which the City shall compensate the County for providing these services.

#### **ARTICLE II**

##### **DURATION**

This Agreement shall go into effect on January 1, 1998, and shall automatically renew from year to year thereafter unless terminated pursuant to the terms and conditions of this Agreement, or amended by the parties.

#### **ARTICLE III**

##### **ADMINISTRATION OF AGREEMENT**

No new or separate legal or administrative entity is created to administer the provisions of this Agreement.

#### **ARTICLE IV**

##### **PROPERTY**

All equipment, property, or improvements used to effectuate this Agreement shall become the sole property of the party who provided the equipment, property, or improvement.

#### **ARTICLE V**

##### **INTERPRETATION**

This Agreement has been and shall be construed as having been made and delivered in the State of Washington, and it is mutually agreed and understood by both parties that this Agreement shall be governed by the laws of the State of Washington. Venue shall be Clark County, Washington.

#### **ARTICLE VI**

##### **AMENDMENTS**

No amendment or modification of this Agreement may be made unless such amendment or modification is written and executed by both parties.

#### **ARTICLE VII**

##### **MODIFICATION / TERMINATION / ARBITRATION**

Each party to this Agreement agrees that the rate schedule attached to this Agreement as Appendums A, B, and C will be renewed annually on or before September 15 of each year and any proposed changes will be presented at a time sufficient to allow both parties to fully discuss the proposed changes.

If an agreement as to the levels of compensation within an interlocal agreement or contract for gross misdemeanor and misdemeanor services cannot be reached between a designated City Officer and the County Finance Director, then either party may invoke binding arbitration on the compensation issue by providing notice of such to the other party. In the case of nonrenewal of an existing contract or interlocal agreement, the notice must be given one hundred twenty (120) days prior to the expiration of the existing contract or agreement and the existing contract or agreement shall remain in effect until a new agreement is reached or until an arbitration award on the matter of fees is made. The City and County shall each select one arbitrator, and the initial two arbitrators shall pick a third arbitrator.

#### **ARTICLE VIII**

##### **INDEMNIFICATION**

1. The City shall indemnify and hold harmless the County, its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any action or omission of the City, its officers, agents, and employees, or any of them, in arresting, detaining, charging, prosecuting, or transporting persons subject to incarceration under this Agreement.

In the event that any suit based upon such a claim, action, loss, or damages is brought against the County, the City shall defend the same at its sole cost and expense; provided, that the County retains the right to participate in said suit if any principle of governmental or public law is involved; and a final judgment is rendered against the County, and its officers, agents, and employees, or any of them, or jointly against the County and the City and their respective officers,



agents, and employee, or any of them, the City shall satisfy the same.

2. The County shall indemnify and hold harmless the City, its officers, agents, and employees or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any action or omission of the County, its officers, agents, and employees, or any of them, in accepting City prisoners, providing booking and screening functions, furnishing all jail and health services, transporting City prisoners or injuries which may occur while incarcerated in a Clark County facility.

In the event of any suit based upon such a claim, action, loss, or damage is brought against the City, the County shall defend the same at its sole cost and expense; provided, that the City retains the right to participate in said suit if any principle of governmental or public law is involved; and a final judgment be rendered against the City, and its officers, agents, and employee, or any of them, or jointly against the City and the County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same.

## **ARTICLE IX**

### **COURT SERVICES**

The County shall provide Court Services to the City under the following agreed terms and conditions:

1. District Court is the court of limited jurisdiction within Clark County. It is the court of jurisdiction for misdemeanors and infractions committed within the City.

2. The City shall be responsible for all court costs associated with gross misdemeanors, misdemeanors, and infractions committed within the City.

A. Per Case Cost. For each misdemeanor committed in the City and filed in Clark County District Court, the County shall assess a per case charge as set forth in Addendum C attached hereto and incorporated herein.

B. Additional Costs. Additional necessary costs incurred will be itemized separately from that of the per case cost. Such additional costs may include court interpreters and witness fees.

## **ARTICLE X**

### **JAIL SERVICES**

Clark County will provide jail services to adequately detain prisoners placed under arrest either directly by City officers or by other law enforcement agencies making an arrest for crimes or violations alleged to have occurred within the City limits or under City ordinances.

## **ARTICLE XI**

### **COST AND PAYMENT FOR JAIL SERVICES**

The City agrees to make payment for adult City prisoners booked into and/or incarcerated in the Clark County Jail as follows:

1. Per Day Cost. For each adult City prisoner booked into and/or incarcerated in the Clark County Jail, the County shall assess a per case charge as set forth in Addendum A attached hereto and incorporated herein.

2. Additional Costs. Additional necessary costs incurred for a prisoner will be itemized separately from that of the per day cost or medical cost. With the exception of an emergency, Clark County will make reasonable efforts to obtain pre-authorization from the City prior to incurring any additional cost.

3. Calculation of Per Day Costs. For purposes of determining per day prisoner costs, any portion of the first incarceration day shall be billed as a full day; the second and subsequent incarceration day shall be billed as follows: Six (6) hours or less, no cost. Over six (6) hours shall be counted as a full day.

4. Incarceration Day. The incarceration day begins at the time a prisoner is booked into the Clark County Jail.

5. Emergency Medical and Necessary Health Care. Pursuant to the Revised Code of Washington, RCW 70.48.130, entitled Health and Safety, all City prisoners confined in the Clark County Jail pursuant to the terms of this Agreement, shall receive those medical services provided to other Clark County inmates. The County, in conjunction with providing medical services, has full authority to order City prisoners having health care needs to existing public or private health care facilities. The Clark County Sheriff's Department will attempt to obtain prior approval from the City for all referrals to either public or private health care providers, unless, the jail or medical staff determines that an emergency exists, in which instances no prior approval will be necessary. Any and all medical expenses incurred under the provisions of this paragraph, which are not performed by medical staff upon contract with the County, or paid by the Department of Social and Health Services ("DSHS"), including all physician, dental, hospital, and clinic costs, shall be the sole responsibility of the City, not the County.

## **ARTICLE XII**

### **CORRECTION SERVICES**

The Corrections Department is responsible for pre-trial investigations of offenders, supervision of offenders released from jail pending trial, pre-sentence investigations, sentencing recommendations, misdemeanor probation supervision, offender work crews, electronic home confinement, offender employment assistance, alcohol education programs for those convicted of driving while intoxicated, anger control workshops, and general law and justice planning support.

## **ARTICLE XIII**

### **PROGRAMS**

The following programs are used by the Clark County District Court for misdemeanor and gross misdemeanor offenders. These services are set forth in the programs to satisfy either court mandated functions or post sentence incarceration alternatives.

1. Pretrial Release. Pretrial Release addresses the provision that any person arrested must be held by the least restrictive means possible until disposition of the offender's case. It provides District and Superior Courts with verified information so that appropriate release decisions can be made in a timely fashion. In addition to serving as a conduit of information to the Courts and to attorneys, the program monitors all offenders placed on Supervised Release, a program subfunction, until the offender is sentenced.

Pretrial offenders are interviewed by Corrections staff to determine appropriateness for release on personal recognizance or supervised release. Those offenders that are released promise to make all of the required court appearances and adhere to specific conditions.

The County shall assess the City the associated costs for Pre-Trial Release as set forth in Appendix B.

2. Probation. Probation provides pre-sentencing information to the Court, which enables the judge to tailor sentences that balance the risk to the community, punishment and the needs of the offenders. This program also monitors compliance with the court-ordered conditions

of probation and enforces court orders.

When defendants are placed on probation they are classified as high risk. As their compliance with conditions is monitored, their classification status is changed to meet their risk level. Proper monitoring according to risk level increases chances of positive completion. The County shall assess the City the associated costs for Probation services as set forth in Addendum B.

3. Work Crew and Alternative Community Service ("ACS"). Work crew and ACS are alternative sentencing work programs designed to reduce jail overcrowding by providing minimum-risk offenders a work option to meet court obligations -- fines, program fees, jail sentences. In addition to screening, Corrections staff monitor the type of work assigned and ensure that offenders complete the hours assigned. The County shall assess the City the associated costs for Work Crew and ACS services as set forth in Addendum B.

4. Deferred Prosecution. Deferred Prosecution monitors compliance with the conditions imposed by a deferred prosecution order, which allows an offender diagnosed with alcohol addiction to undergo a two-year treatment program. Upon successful completion of the program, the charge is dismissed. Although the program is used primarily for DWI cases, it may also be applied for other specified offenses and for offenders with drug addiction and mental health problems.

The intent of Deferred Prosecution is to provide a structure and accountability for the offender to complete their treatment program and successfully complete their course of supervision. The County shall assess the City the associated costs for Deferred Prosecution services as set forth in Addendum B.

5. Offender Industries. Offender Industries is the program that oversees the plant nursery located at Mabry. This program educates and trains offenders in basic horticulture in order to give offenders a marketable skill for a sustained wage and to grow plant material for use in County Parks and along County roads. Offender Industries also contains supervision of an in-custody recycling crew and an in-custody janitorial crew.

Plants that are propagated and grown in plant nursery program are sold to public entities for their landscaping needs. The County shall assess the City the associated costs for Offender Industries services as set forth in Addendum B

6. Indigent Defense Cost Recovery. Indigent Defense Cost Recovery (IDCR) is responsible for recovering the offender's portion of the costs for legal representation for those offenders determined to be partially indigent. This reimbursement offsets the cost to the county for providing court appointed attorney services.

Those defendants using court appointed attorneys who are determined to be partially indigent but able to contribute, are required to pay back a portion of the cost for their legal defense. The County shall assess the City the associated costs for Indigent Defense Cost Recovery services as set forth in Addendum B

7. Electronic Home Confinement. Electronic Home Confinement (EHC) provides a custodial alternative that requires electronic monitoring of an offender serving a sentence of partial confinement at his/her residence. These programs allow for a more judicious use of jail spaces for repeat and more serious offenders. The County shall assess the City the associated costs for Electric Home Confinement services as set forth in Addendum B

8. DWI Center. The DWI Detention Center program provides services to those offenders sentenced to serve a one or two day sentence for a first-time offense of DWI. The education provided to offenders at the DWI Center should impact their habits so that they are not rearrested for DWI within six (6) months of completing the program. The County shall assess the

City the associated costs for DWI Center services as set forth in Addendum B

## **ARTICLE XIV**

### **BILLING**

Clark County will bill the City quarterly, and the City will remit payment within thirty (30) days after receipt of the quarterly billing.

1. Financial responsibility shall be as follows:

A. The City agrees that it will pay prisoner, District Court and corrections cost as provided for in this Agreement for any adult arrested and/or incarcerated as a result of a misdemeanor or gross misdemeanor having occurred within the City limits.

B. The City shall not be responsible for jail costs for those adults who are held in custody on felony offenses or attempt to commit a felony offense, except those which are gross misdemeanors, when felony charges are actually filed.

C. The City shall have no obligation for any costs associated with filed felonies which are later reduced to misdemeanors or gross misdemeanors by the Prosecuting Attorney.

D. In those cases in which felony charges are not filed and the case is referred to the City Attorney for prosecution, the incarceration cost will be the responsibility of the City.

E. The City will have no responsibility for prisoner costs for any adult arrested by City law enforcement officers on a warrant issued for a crime or violation alleged to have occurred outside the City limits.

2. Multiple Charges. It is the intent of the parties to this Agreement that the City shall pay only those jail and correction costs directly attributable to the incarceration or processing of misdemeanor or gross misdemeanor charges originating from the City's jurisdiction. By way of example, prisoners held or processed on multiple charges shall be billed as follows:

A. Prisoner held or processed on both felony and city misdemeanor or gross misdemeanor charges.

i. Concurrent Sentences. No charge, the more serious felony offense would control.

ii. Consecutive Sentences. Upon completion of the felony sentence, as reduced by good time, the billing for City charges will commence.

B. City Misdemeanor or Gross Misdemeanor Charges and other City or County Charges.

i. Concurrent Sentences. Split in proportion to each jurisdiction's sentence.

ii. Consecutive Sentence. Upon completion of the other City's or County's charges, as reduced by good time, the billing for City charges will commence.

C. Pretrial. Jail costs or correction services directly attributable to the City's misdemeanor or gross misdemeanor are the responsibility of the City. If the sole basis of custody or corrections charges results from the City charge and if for the other charges for which a person is being processed bail, supervised release, or release on the person's own recognizance is available and such person would have been released, pretrial incarceration cost will be billed to the City. If the prisoner would make bail, receive supervised release, or release would be on their own recognizance on the City charges but the sole basis of

retaining the person in pretrial custody is because of the charge of another city, county, or felony, the City shall not be charged.

CITY OF VANCOUVER

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Vernon E. Stoner, City Manager

Attest:

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Ken Shorthill, Clerk

Approved as to form:

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Ted Gathe, City Attorney

BOARD OF COUNTY COMMISSIONERS  
FOR CLARK COUNTY, WASHINGTON

---

Betty Sue Morris, Chair

Attest:

---

Louise Richards, Clerk to the Board

Approved as to form only:

ARTHUR D. CURTIS  
Prosecuting Attorney

By:

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Curt Wyrick  
Senior Deputy

## ADDENDUM

### 2002 RATES

#### DISTRICT COURT:.

Traffic Infractioni	\$17.37
Nor-Traffic Infraction	10.42
Parking Infraction	8.09
DL7	221.16
Other Criminal 3"raftic	122.84
Criminal Nan Traffic	138.84

#### CORRECTIONS:

Supervision	\$ 1.08
Work Crew	3535
Electronic Home Confinement	4.40

#### JAIL:

Cost Per Bed Day	\$ 52 68
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Signature of this agreement denotes acceptance of the rates and amends the Interlocal Government

Contract between the City and Clark County for District Court Services, Jail Services and Corrections Services.

/s/ John Ingram  
John Ingram, County Finance director

10-26-03  
Date

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
City

## **EXHIBIT C**

### **Chapter 12.05A TRANSPORTATION STANDARDS**

#### **Title 12 STREETS AND ROADS**

### **Chapter 12.05A TRANSPORTATION STANDARDS**

#### **Article I. Overview**

12.05A.010 Purpose.

12.05A.020 Relationship to comprehensive plan.

12.05A.030 Definitions.

12.05A.040 Functional classifications--Purpose.

12.05A.050 Functional classifications--Urban roads.

12.05A.060 Functional classifications--Rural roads.

12.05A.070 Scenic routes.

12.05A.080 Urban reserve, urban holding areas and rural centers.

#### **Article II. Standards for a Development Review**

12.05A.100 Transportation impact study.

12.05A.110 Circulation plan.

12.05A.120 Transportation design criteria.

12.05A.210 Access management.

12.05A.220 Frontage roads/improvement.

12.05A.230 Off-Site road improvement.

12.05A.240 Intersection design.

12.05A.250 Sight distances.

12.05A.260 Street extensions.

12.05A.270 Private roads.\*

12.05A.275 Joint driveways.

12.05A.280 Cul-de-sacs and turnarounds.

12.05A.290 Urban neighborhood traffic management.

12.05A.300 Urban transit circulation standards.

12.05A.400 Pedestrian/bicycle circulation standards.

12.05A.600 Landscaping plan.

12.05A.620 Right-of-way standards.

12.05A.660 Road modifications.

#### **Article 111. Specifications for Design and Construction**

12.05A.700 Transportation standard specifications.

12.05A.710 Construction plan requirements for transportation and utility improvements.

12.05A.740 Transportation design specifications.

12.05A.770 Transportation construction specification.

#### **Title 13 PUBLIC WORKS**

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#### Main Table of Contents

#### **Title 13 PUBLIC WORKS**

Chapter 13.04 FLOOD CONTROL DISTRICT

Chapter 13.08 SEWERAGE SYSTEM

Chapter 13.08A SEWERAGE REGULATIONS

Chapter 13.10 USE OF SEWERAGE SYSTEM

Chapter 13.12 UNDERGROUND UTILITY PERMIT

Chapter 13.12A UTILITY PERMITS



Chapter 13.16 AGENCY WORK

Chapter 13.20 INFORMATIONAL SIGNS

Chapter 13.24 STORMWATER DRAINAGE POLICY

Chapter 13.25 STORMWATER CONTROL ORDINANCE

Chapter 13.25A STORMWATER CONTROL ORDINANCE

Chapter 13.26 WATER DRAINAGE AND EROSION CONTROL PLANS

Chapter 13.26A WATER QUALITY

Chapter 13.27 EROSION CONTROL ORDINANCE

Chapter 13.27A EROSION CONTROL ORDINANCE

Chapter 13.29 STORMWATER AND EROSION CONTROL ORDINANCE

Chapter 13.30A CLEAN WATER FUNDING

Chapter 13.31 WATER QUALITY FEES

Chapter 13.36 WETLAND PROTECTION ORDINANCE

Chapter 13.40 WATER SUPPLY

Chapter 13.40A WATER SUPPLY

Chapter 13.50 VEGETATION CLEARING MANAGEMENT ORDINANCE

Chapter 13.51 HABITAT CONSERVATION ORDINANCE

Chapter 13.55 FOREST PRACTICES

Chapter 13.60 GEOLOGIC HAZARD AREAS REGULATIONS

Chapter 13.70 CRITICAL AQUIFER RECHARGE AREAS

## **TITLE 14 BUILDINGS AND STRUCTURES**

### Main Table of Contents

#### **Title 14 BUILDING AND STRUCTURES**

Chapter 14.04 BUILDING CODE

Chapter 14.08 PLUMBING CODE

Chapter 14.12 MECHANICAL CODE

Chapter 14.14 DANGEROUS BUILDING CODE

Chapter 14.14A DANGEROUS BUILDING CODE

Chapter 14.16 HOUSE AND STREET NUMBERING

Chapter 14.20 SWIMMING POOLS

Chapter 14.24 THERMAL INSULATION STANDARDS

Chapter 14.28 WASHINGTON STATE ENERGY CODE

Chapter 14.28A CLARK COUNTY ENERGY CODE

Chapter 14.32 MOBILE HOME PERMITS

#### **Title 15 FIRE PREVENTION**

### Main Table of Contents

#### **Title 15 FIRE PREVENTION**

Chapter 15.12 UNIFORM FIRE CODE

Chapter 15.13 WILDLAND URBAN INTERFACE/INTERMIX ORDINANCE

Chapter 15.14 FIRE INSPECTION AND FEES

Chapter 15.14A FEES

Chapter 15.16 MINIMUM FIRE FLOW--EXCEPTIONS

## **Title 20 CLARK COUNTY ENVIRONMENTAL POLICY ORDINANCE**

### Main Table of Contents

## **Title 20 CLARK COUNTY ENVIRONMENTAL POLICY ORDINANCE**

Chapter 20.01 AUTHORITY AND CONTENTS

Chapter 20.02 GENERAL REQUIREMENTS

Chapter 20.06 THRESHOLD DETERMINATIONS

Chapter 20.10 ENVIRONMENTAL IMPACT STATEMENT (EIS)

Chapter 20.30 NOTIFICATION AND COMMENTING

Chapter 20.40 USE OF EXISTING ENVIRONMENTAL DOCUMENTS

Chapter 20.50 SEPA AND COUNTY DECISIONS

Chapter 20.60 DEFINITIONS

Chapter 20.70 CATEGORICAL EXEMPTIONS

Chapter 20.80 AGENCY COMPLIANCE

Chapter 20.90 FORMS

## **EXHIBIT "D"**

### **Cowlitz Indian Tribe of Washington Tribal Resolution of Limited Waiver of Sovereign Immunity**

#### **RESOLUTION NO. 2003--**

Date of Enactment     June \_\_\_, 2003

Subject                Limited Waiver of Sovereign Immunity

WHEREAS: This Cowlitz Tribal Council is the Governing Body of the Cowlitz Indian Tribe of Washington and authorized to act on behalf of said Tribe; and,

WHEREAS: The Cowlitz Indian Tribe desires to pursue both cultural and economic development on tribal land within Clark County, Washington; and,

WHEREAS: The Cowlitz Indian Tribe desires to enter into a Memorandum of Understanding with Clark County, a political subdivision of the State of Washington, for the purposes, among others, of establishing a business relationship between the parties which would comprehensively mitigate the impacts of the tribal project within Clark County; and,

WHEREAS: The Cowlitz Indian Tribe and Clark County desire to have a tribal limited waiver of sovereign immunity adopted by the Tribe in conjunction with the execution of the Memorandum of Understanding to assure that the terms of such Memorandum of Understanding can be mutually enforced.

THEREFORE BE IT RESOLVED, that the Cowlitz Tribal Council of the Cowlitz Indian Tribe

hereby adopts this Resolution of Limited Waiver of Sovereign Immunity through which it waives its sovereign immunity in favor of Clark County, Washington, as to matters arising in conjunction with the Memorandum of Understanding between the Cowlitz Indian Tribe and Clark County, a copy of which is attached hereto and incorporated herein by this reference.

BE IT FURTHER RESOLVED, that the Cowlitz Tribal Council hereby adopts such Memorandum of Understanding and all of its terms.

BE IT FURTHER RESOLVED, that the Cowlitz Tribal Council specifically consents to the enforcement of the terms of such Memorandum of Understanding and all of its terms.

BE IT FURTHER RESOLVED, that the Cowlitz Tribal Council specifically limits this limited waiver exclusively to matters arising under the attached Memorandum of Understanding.

CERTIFICATION:

On June \_\_\_\_, 2003, this Resolution of Limited Waiver of Sovereign Immunity was approved at a meeting of the Cowlitz Tribal Council held on this date, and the vote was:

\_\_\_\_FOR

\_\_\_\_AGAINST

\_\_\_\_ABSTAIN

\_\_\_\_\_  
Chairman  
Cowlitz Tribal Council

ATTEST:

Secretary/Treasurer

50304641